IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 11240 of 1997

Between:

1. K.Ravi Shankar, S/o K.Subba Rayudu, R/o D.No.19-3-5(1),

Srinivasa Nagar, Renigunta Road, Tirupathi.

2. V.O.Venugopal Reddy, S/o Krishna Reddy, R/o D.No.1195(A)

Srinivasa Nagar, K.T.Road, Tirupati.

3. P.Rathnaiah, S/o P.Ankaiah, Managing Partner, M/s Sri Venkateswara Constructions , D.No.20-3-134/A, Siva Jyothi Nagar, Tirupati, Chitoor District.

..... PETITIONERS

AND

1. The Telecom District Manager, Sanchar Bhavan, II Floor

Tirupati 517 501, Chitoor District.

2. Chief General Manager, Telecom, A.P.Circle, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of Mandamus or any other appropriate writ or direction declaring the action of the respondents in deducting 4% towards sales tax from the bills for the contract works awarded in the proceedings of the 1st respondent issued in TDM/TRP/C.W./97-98/17, dated 13-05-1997 as illegal, arbitrary and without jurisdiction and contrary to the provisions of A.P.G.S.T.Act.

Counsel for the Petitioners:MR.O.MANOHER REDDY

Counsel for the Respondents: None appeared

The Court made the following :

O R D E R (Per the Hon'ble Sri Justice Bilal Nazki):

The petitioners had challenged the action of the first respondent in deducting 4 per cent towards sales tax from the contract bills of the petitioners for the work awarded on 13-05-1997.

Nobody appears for respondents.

However, in the counter-affidavit, it is stated that the Commercial Tax Officer, Tirupathi, on 27-04-1995, issued notice to the first respondent asking him to deduct tax @ 4 per cent as the work being executed by the petitioners was a work contract. It was made clear that the amounts deducted shall be taken into consideration at the time of final assessment and it is stated in the counter that the tax was collected during 1996-97 from the Contractors after serving notices on them. But the amounts were refunded to them, pending clarification, which was sought from the authorities and they were informed on 22-02-1996 that the deduction of tax was deferred temporarily and the same would be recovered on receipt of clarification from the Sales Tax Authorities. The Sales Tax Authorities insisted to recover the tax from the petitioners, therefore, the recoveries were made.

Since the recoveries have already been made and must have been debited to the credit of the Sales Tax Department, therefore, the question, whether the petitioners were exigible to tax at source or not, would have to be decided by the Sales Tax Authorities, if not decided already, in an assessment and this Court will not be in a position to decide the question.

As such, the writ petition is dismissed. However, It is open to the petitioners to seek refund from the authorities concerned, if so advised and if they think that they were not liable to pay the tax. No order as to costs.

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(BILAL NAZKI, J)

28th October, 2004.

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(S.ANANDA REDDY, J)

vrn

To

1. The Telecom District Manager, Sanchar Bhavan, II Floor

Tirupati 517 501, Chitoor District.

2. Chief General Manager, Telecom, A.P.Circle, Hyderabad.

3. Two C.D copies